

Summary

The augmented proposal provided by the Private Wireless Coalition and other parties is so replete with legal inadequacies, administrative complexity and poor policy direction that it must fail. UTC and EEI question the FCC's authority to adopt a secretly negotiated contract among a few parties in the 800 MHz proceeding and to impose it on thousands of licensees who have had no part in the agreements underlying it, or to mandate that a private party fund changes required under new rules. UTC and EEI oppose strongly the Retuning Coordination Committee as currently proposed, which would put nearly unlimited authority over affected licensees into the hands of a small number of entities with no guarantee of non-discriminatory treatment. At the same time, the proposed multi-year freeze on all other 800 MHz licensing would prevent needed modifications, expansions or upgrades to mission-critical systems.

Several portions of the proposal are unacceptable to critical infrastructure (CI) licensees. UTC and EEI continue to urge the Commission against dividing the frequency band based on an arbitrary definition of acceptable technology that will prevent implementation of more efficient systems. The proposed rules for the 859-861 MHz guard band, changed radically from earlier versions of this plan, would squeeze CI and other non-Public Safety licensees into a portion of the band offering severely limited interference protection, thereby rendering useless much of their licensed coverage areas. UTC and EEI continue to stress that *all* licensees are entitled to interference-free operation and urge against the dangerous precedent that one class of licensee is more entitled to reliable

communications than others in the same band. Nor should CI be separated from public safety, with which it increasingly shares systems, through “encouraged” moves to the 900 MHz and 700 MHz bands, respectively.

UTC, EEI and their member companies urge the FCC to act in this band in accordance with the principles set forth in the recent Spectrum Policy Task Force report, and recognized by the Coalition parties themselves in their proposed treatment of the SouthernLINC system. The Commission should provide technical parameters that guarantee interference elimination and prevention, coupled with regulatory flexibility so that parties can solve interference, continue to develop shared systems and move to more advanced technology through private market agreements.

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**Before the
Federal Communications Commission
Washington DC**

In the Matter of)
)
Improving Public Safety Communications)
In the 800 MHz Band) WT Docket No. 02-55
)
Consolidating the 900 MHz Industrial/Land)
Transportation and Business Pool Channels)

To: The Wireless Telecommunications Bureau

**Comments of the United Telecom Council and the Edison Electric
Institute
on the Supplemental Comments**

I. INTRODUCTION

The United Telecom Council (UTC) and the Edison Electric Institute (EEI) (collectively, UTC/EEI) appreciate this opportunity to offer their joint comments on the Supplemental Comments filed by various private wireless associations, public safety wireless associations and Nextel Communications.¹ UTC has been active in this proceeding since its inception, and UTC/EEI filed joint comments in the previous round of comments in which the two associations raised several questions about the provisions of the Private Wireless Coalition compromise plan. The Supplemental Comments purport to provide answers to those and other questions; however, the plan has changed from earlier versions, and many of the answers would inflict significant harm on the critical infrastructure entities UTC/EEI represents, along with hundreds of other 800 MHz licensees. The proposal detailed in the Supplemental Comments (the PWC Proposal) is

¹ Supplemental Comments of the Consensus Parties, WT Docket No. 02-55, filed December 24, 2002 ("Supplemental Comments").

massively complex, inequitable and would not meet the goals of this proceeding.
This proposal must not and arguably cannot, be adopted.

II. DISCUSSION

A. **The PWC Proposal Is a Privately Negotiated Contract Which Should Not Be Imposed on an Entire Frequency Band.**

To begin with, UTC/EEI contests the claim in the Supplemental Comments that most users of the 800 MHz band support this proposal. However one calculates percentages, the fact remains that licensees operating many of the largest non-commercial systems in this band, across the country, oppose the PWC Proposal strongly.² That opposition has only deepened since the provisions contained in the Supplemental Comments finally were revealed.³

Of primary concern to UTC/EEI and its member companies is that the provisions of the Supplemental Comments, and the PWC Proposal generally, were negotiated secretly, without input from most of the user group associations on which their members rely. The PWC Proposal is, in truth, a private contract among a small number of parties that those parties now seek to have imposed on thousands of licensees who had no part in its development. This is inappropriate in a rulemaking proceeding subject to the open and transparent procedural requirements of the Administrative Procedure Act.

Merely adding the outcome of secret negotiations to the public record does not cure this defect. The parties to the PWC Proposal demand that their

² And, contrary to PWC Parties' claims, would be impacted: a search of General Category licensees shows that seven of the 30 largest non-commercial license holders in this portion of the band are power/energy companies.

massively complex plan be implemented as a whole: bandplan, re-banding process, Retuning Coordination Committee, operating rules, new spectrum licenses, and more. To adopt this package “as is” would put into place, not only those provisions included in public filings, but underlying negotiations and agreements of which all other parties have no knowledge. UTC/EEI submits that a secretly negotiated plan arrived at among a minimal number of parties cannot be construed as a public consensus, and may not be adopted *in toto* in an open rulemaking proceeding.

UTC/EEI has held throughout this proceeding that private market agreements among licensees are the appropriate means of both eliminating interference and re-configuring the band to promote more efficient use and advanced technology.⁴ However, measures as specific as those in the PWC Proposal should be included in market agreements *between specific parties*, negotiating in good faith with full knowledge of the process. They must not be imposed on hundreds of licensees who have been operating successfully and causing no interference. Whether the harm to them caused by mandatory re-banding is reimbursed or not (and in many cases under the PWC Proposal, the answer is “not”), they should not have to seek recourse beyond the Commission for the harm caused by an administrative process not carried out as required.

There are also procedural questions surrounding the reimbursement proposal itself. The proposal raises an obvious conflict of interest for the

³ UTC/EEI notes again that several large municipalities with multi-agency systems are among the commenters not supporting this position.

Commission. Leaving aside whether it is appropriate to allow a licensee that causes interference to dictate the terms of mitigation to the Commission, there are other interests at stake that are effectively shut out of the process.⁵ Even if the Commission permitted itself to be manipulated by accepting this Faustian bargain, no court would uphold it because it undeniably prejudices the interests that may or may not be parties to the proceeding.⁶ In short, even if Nextel consents, it is beyond the FCC's authority to mandate such a settlement.

B. The PWC Proposal is Contrary to Existing and Developing FCC Spectrum Policy.

In the parlance of the recently released FCC Spectrum Policy Task Force report,⁷ the PWC Proposal amounts to the mother of all "command and control" regulatory models. UTC/EEI can find no justification for the Commission's complete abandonment of its spectrum policy principles in this proceeding, and recommends it turn instead to flexibility, coupled with interference prevention, that has been the direction in which its public policy has been headed.

The SPTF Report defines "command and control" as the traditional process of spectrum management, in which the FCC "allocates and assigns frequencies to limited categories of spectrum users for specific government-

⁴ UTC/EEI notes that such agreements are to be made possible through regulatory flexibility, see Section B, *below*; and driven by immediate interference mitigation requirements; see Section E, *below*.

⁵ The Commission has proposed to allocate the 1910-1920 MHz band, which could be paired with the 1990-2000 MHz band to support the development of advanced wireless services (AWS), commonly referred to as "Third Generation" or "IMT-2000." That proceeding bears directly on the proposal by the PWC to permit Nextel to operate in the 1910-1915/1990-1995 MHz bands.

⁶ See *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327 (holding that the Commission may not grant an application without a hearing if a mutually exclusive application would be precluded by doing so.)

⁷ *Spectrum Policy Task Force Report*, ET Docket No. 02-135, released November 2002 (SPTF Report).

defined uses. Service rules for the band specify eligibility and service restrictions, power limits, build-out requirements and other rules.”⁸ However, the PWC Proposal goes far beyond these limits: it seeks different eligibility restrictions, power limits and other spectrum rights within small portions of the band, along with a hugely complex process for placing specific systems in specific places, with no ability to move, expand or upgrade without permission.

The time, effort, expense and administrative nightmare of the PWC three-plus-year timeline simply are not necessary. Resolving and preventing interference *is*, and would be accomplished more easily and more effectively through some of the principles of the “exclusive use” model: “[a] licensing model in which a licensee has exclusive and transferable rights to the use of specified spectrum within a defined geographic area, with flexible use rights that are governed primarily by technical rules to protect spectrum users against interference.”⁹ While the SPTF Report is relatively new and its ideas not fully explained, this model sounds very much like the direction UTC has been urging: *require* licensees to remedy, and not to cause, interference, and provide flexibility so that they may enter into private market agreements as needed. Such agreements would enable interference resolution or system upgrades through channel swaps, or aggregation of frequencies among licensees to permit the shared implementation and use of expensive new technology. UTC/EEI submits that specific pools of frequencies based on user type in the 800 MHz band simply

⁸ SPTF Report at 35.

⁹ *Id.*

are obsolete: if systems must be engineered so that they do not cause interference, eligibility rules can be flexible.

Another benefit of flexibility, as opposed to the old/new division of the band proposed by the PWC Parties, is to encourage new technology: “the Commission [should] evolve its spectrum policy toward more flexible and market-oriented spectrum policies that will provide incentives for users to migrate to more technologically innovative and economically efficient uses of spectrum.”¹⁰ UTC/EEI can think of no reason why the FCC would want to stifle innovation in the 800 MHz band by restricting all licensees other than Nextel to old technology, yet that precisely would be the outcome of the proposed “cellular/non-cellular” barrier at 861 MHz.¹¹

UTC/EEI is aware of several utilities now implementing large digital wireless systems, each at a cost of tens of millions of dollars. Especially in urban areas, they already risk running afoul of the proposed cellular definition and would require a waiver simply to continue operating under the PWC Proposal. These licensees do not cause interference, and are prepared to be subject to strict interference requirements so that they will not do so in the future – they engineer and build their systems to a higher standard, because their mission-critical operations demand it (and they quite often share their systems with Public Safety agencies). There is no reason to penalize licensees that are moving in the direction of spectrum efficiency; and UTC/EEI urges the Commission not to

¹⁰ *Id.* at 15.

¹¹ See Section II. F. *infra* (explaining that proposed PWC treatment of SouthernLINC’s system vindicates UTC’s belief that the FCC should adopt informal methods of mitigating interference in the 800 MHz band to encourage efficient use of the band.)

create a spectrum backwater in more than half of the 800 MHz band by prohibiting such upgrades.

UTC/EEI also has significant concerns about the Commission's possible abandonment of a long-held spectrum policy. Nowhere in the 800 MHz, or other land mobile rules, is one class of licensee held to be superior to any other. Separation criteria, the past basis for interference protection, were never different within pools based on whether specific licensees belonged a particular user group. However, the PWC Proposal recommends that the long-standing equality among users be thrown out: besides limiting access to much-needed additional spectrum for several years, this plan suddenly awards one group of licensees more right to protected operations than any other.

UTC/EEI is highly aware of Public Safety employees' need for safe operations. Critical infrastructure personnel have the same need, and rely similarly on their communications equipment in highly dangerous situations. There is no question that Public Safety licensees should be free from both the existence and the threat of harmful interference. However, *all* 800 MHz licensees are so entitled. Both interference restrictions and interference protection should be imposed uniformly to ensure the useful future of this important frequency band.

C. The Proposed Re-Banding Process would be Overly Complex and the Proposed RCC Overly Powerful.

The 150 pages of Supplemental Comments, added to the first portion of the PWC Proposal filed as Reply Comments,¹² together present a plan of overwhelming complexity.¹³ If this plan can work at all, it can do so only with the most precise timing and the cooperation of everyone involved, including the incumbents facing serious loss of usable spectrum under its provisions. UTC/EEI submits that it is unworkable and that the complexity is unnecessary to meet FCC goals. UTC/EEI especially is concerned that, should this process not go as envisioned, the agency would not be in a position to assume the undertaking and carry it through. With a quite-possible breakdown in the myriad details of this proposal, the band would be left in worse shape than before: licensees unable to move or grow, a detailed re-banding halted mid-stream, and harmful interference as bad or worse than before. The thousands of licensees that have lived with the uncertainty and apprehension of the last fifteen months would then be faced with having to start the process all over again.

UTC/EEI is particularly concerned about many aspects of the proposed Retuning Coordination Committee (RCC). The RCC more or less would take over the FCC's responsibilities in the 800 MHz band. However, this group would not be subject to the safeguards inherent in a federal agency; in fact, the Supplemental Comments provide no means by which the RCC could be made responsible for the consequences of its actions, since all disagreements would fall back upon the shoulders of the FCC. The agency, meanwhile, could not have

¹² Reply Comments of the Private Wireless Coalition, Nextel Communications, et al., WT Docket No. 02-55, filed August 7, 2002.

¹³ UTC/EEI notes that Phase I alone requires ten pages of the Supplemental Comments just to describe (pp. 17-27), while the draft rule framework (Appendix C) runs to 31 pages.

full knowledge of what was being carried out under its delegated authority given the large numbers of negotiations and transactions taking place.

The Supplemental Comments propose that the majority of the limited makeup of the RCC – two non-Public Safety coordinators, two Public Safety coordinators and Nextel – be referred to the Land Mobile Communications Council (LMCC).¹⁴ Members would be chosen “to incorporate the skill sets and licensing knowledge critical to implementing and completing the Consensus Plan quickly and efficiently.”¹⁵ UTC/EEI submits that this proposal is a fiction, and is in fact designed to ensure that only the primary negotiating parties developing the Supplemental Comments will be included in the RCC.¹⁶

UTC’s members have indicated great concern that their specialized systems – some of them quite large – would not receive equal treatment under the proposed RCC. Even if the likely non-Public Safety members should be inclined to watch their interests, their efforts would be defeated easily by a 3-2 vote of Nextel and Public Safety interests. Should the FCC determine that an outside group is to be made responsible for whatever process it deems necessary in the 800 MHz band, UTC/EEI demands that representatives from *all* licensee groups be included; that treatment of licensees be non-discriminatory; that the group be required to report regularly on its actions; and that an expedited

¹⁴ Supplemental Comments at 15-16.

¹⁵ *Id.* at 15.

¹⁶ UTC is aware that many of the parties signing the Supplemental Comments generally were not included in negotiating meetings, let alone private wireless representatives not part of the PWC. Thus, only a very few parties would have the “skill sets” to implement the plan as envisioned in the Supplemental Comments. Moreover, the signing parties make up a majority of the members of LMCC, leaving little room for other than the pre-determined outcome.

means of relief be provided for any licensees harmed by the actions of such a group.

UTC/EEI also is concerned about the amount of information demanded for the proposed RCC, which raises serious issues related to Homeland Security.¹⁷ In an era when the Federal Energy Regulatory Commission (FERC) is removing data about critical infrastructure systems from its public records¹⁸ and imposing cyber-security protection and reporting requirements on critical infrastructure entities,¹⁹ the FCC should be making public less, not more, information about public safety and critical infrastructure telecommunications systems. Still less should that information be placed in the hands of a third-party group with no inherent interest in, or responsibility for, keeping it secure.²⁰

D. Critical Infrastructure Must Not be Forced Into Deficient Spectrum, Prevented from Upgrading to More Efficient Technology or “ Encouraged” to Move to the 900 MHz Band.

UTC/EEI considers many of the provisions of the proposed mandatory re-banding completely unacceptable to critical infrastructure systems. The changes in the Supplemental Comments from the former proposed use of the 859-861 MHz “guard band” would result in critical infrastructure, and all other non-public

¹⁷ The list of information on voice and data systems to be submitted to the RCC – much of it not included on FCC licensees – runs to several pages of Appendix C of the Supplemental Comments.

¹⁸ Statement of Policy on Treatment of Previously Public Documents, Docket No. PL-02-1-000, 66 Fed. Reg. 52917 (2001); *and see* Critical Energy Infrastructure Information, *Notice of Proposed Rulemaking*, Docket Nos. RM 04-2-000 and PL-02-1-000, 67 FR 57994-02 (2002).

¹⁹ Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design, *Notice of Proposed Rulemaking*, Docket No. RM 01-12-000, 67 Fed. Reg. 55452-01, ¶¶575 *et seq.* (2002)

²⁰ UTC/EEI also demands that, should the FCC implement an outside committee to carry out any desired changes to the band, and should it require system information be provided to such a

safety licensees, being forced into deficient spectrum with no hope of relief. Also unacceptable is the cellular-non-cellular division that would serve to prevent migration to new technology without a burdensome waiver process, and the contemplated persuasion of non-public safety licensees to the 900 MHz band.²¹

One of the many questions UTC/EEI raised in the last round of this proceeding concerned the treatment of incumbents in the proposed 859-861 MHz guard band, then designed for low-power, campus systems.²² UTC/EEI was concerned about the potential for greater interference from CMRS systems in this band, and urged that any re-banding plan include a means for incumbents to move lower in the band.

In providing answers to incumbent questions, the Supplemental Comments have hardly ameliorated these concerns. Now, the guard band is to be the preferred home for *all* non-public safety licensees, presumably to leave as much vacated Nextel spectrum in the middle of the band as possible available to public safety's five-year hold. Should a licensee impacted by greater interference wish to leave the guard band, it may do so only after providing detailed justification and receiving a nod of approval from the RCC – and then may only move to available Business-Industrial/Land Transportation pool channels, and at its own expense.²³ As the FCC is no doubt aware, such frequencies are scarce throughout most of the country, meaning that mission-critical systems along with

group, such information should not be made available to any carrier for purposes of marketing commercial services to private wireless licensees.

²¹ UTC also notes that its members operating in international border areas have serious concerns about the provisions of Appendix G to the Supplemental Comments. UTC/EEI defers to these members – and the comments of the Border Area Coalition – for their analysis of this issue.

²² See, UTC Comments on the Public Notice, WT Docket No. 02-55, submitted September 23, 2002.

other commercial and non-commercial facilities are to be moved into a cramped 2 MHz of spectrum, subject to increased interference and effectively prevented from moving.²⁴

Further, interference protection is to be greatly reduced in the guard band under the PWC proposal. The plan calls for sliding interference protection between 859 MHz and 861 MHz, with the threshold increased by 33 dB closest to 861 MHz.²⁵ UTC members have calculated the differences against their systems, and noted that the average base station will lose 70-75 percent (70-75%) of its usable coverage area, making vital communications systems virtually useless. Utilities and other critical infrastructure entities, which have built ubiquitous coverage into their communications systems because field personnel *must have it*, simply cannot suffer interference across three-quarters of their service areas. Moving CI systems into deficient spectrum, where they are unable to move out and unable to seek relief from interference, is completely unacceptable.

Offering the alternative of 900 MHz spectrum is similarly unattractive. As UTC has pointed out, comparable equipment variety and quality is not available for the 900 MHz band, nor is Nextel's spectrum nationwide or sufficient to provide a home for large systems. 900 MHz, with public safety encouraged to move to the 700 MHz band, also is not an answer for the increasing number of CI/public

²³ Supplemental Comments at 10, n.14.

²⁴ UTC/EEI notes also that most of these licensees will have no recourse to the interference mitigation relief set forth in the PWC Proposal; such relief is limited only to licensees, first upgrading their own systems, that use TIA Class A receivers. See, Supplemental Comments at 41. Since TIA Class A refers to public safety's Project 25 standard, hardly used outside the public safety community and not even used by all public safety systems, most licensees will be entitled to no interference relief whatever under this proposal.

safety shared systems across the country. Such systems are especially numerous among municipal utilities and the local public safety agencies within the same, or adjacent, governments²⁶. Critical infrastructure and public safety use similar equipment, have very similar emergency response needs, and are increasingly working together to afford expensive new systems to meet those needs. They must not be separated into spectrum pools up to 200 MHz apart if the United States is to have improved emergency response communications.

All 800 MHz licensees are equally entitled to operate in the 800 MHz band, and to do so free of interference. It is not appropriate that CI entities and other licensees be relegated to near-secondary status in a buffer zone amounting to a no-man's land of harmful interference. In no way could either the guard band or the 900 MHz frequency band be considered "comparable facilities" as the provisions of the PWC Proposal are designed. UTC/EEI urges the FCC to reject them.

E. The 800 MHz Band Needs New Technical Rules Immediately to Resolve Current and Prevent Future Interference.

Throughout this proceeding, UTC has argued for tighter technical rules to govern all licensees in the 800 MHz frequency band, so that no licensee may cause interference and remain "in compliance" with the Commission's Rules. In its Reply Comments, UTC recommended some specific technical standards to replace outdated rules adopted in the early 1970s for this frequency band.²⁷ UTC provided those recommendations and additional work carried out by its 800 MHz

²⁵ Supplemental Comments at 41-42.

Technical Subcommittee to the PWC, and was hoping that UTC could support the resulting PWC technical recommendations. However, a review of Appendix F to the Supplemental Comments shows this to be nearly impossible; the technical rules proposed cannot be extracted from the overall, flawed plan.

The first problem with these recommendations arises with the title of the Appendix itself: "Policies and Procedures for Post-Realignment Interference Mitigation." Licensees in this 800 MHz band should not be required to wait the three or more years the PWC Parties estimates its unwieldy re-banding process will take before receiving interference relief. 800 MHz licensees receiving interference should have new technical rules *now*. Providing them will accomplish much of the interference-resolution goal that was the basis for this proceeding and make most of the draconian measures of the PWC Proposal unnecessary.

UTC/EEI herein reiterates many of the recommendations from UTC's Reply Comments and adds additional proposed technical and interference mitigation standards:

1. Adopt rules to make interferors responsible for the interference they cause.

a. The FCC should codify and adopt its policy that the interferor must fix reported interference, even if the interfering equipment is operating within published specifications while causing the interference. UTC/EEI recommends that resolution should be substantially complete within 60 days after the interferor is contacted.

²⁶ While serving a minority of American households, municipal utilities and cooperatives make up the vast majority of total utility companies across the country. Water utilities are overwhelmingly public-owned.

²⁷ See, Appendix to UTC Reply Comments, WT Docket No. 02-55, submitted August 7, 2002.

b. The FCC should codify and adopt a standard that defines a reduction in system reliability reduction of > 1%²⁸ as “harmful interference.” UTC recommends the standards found in Part 101 of the Commission’s Rules be adopted to determine how system reliability is measured. The FCC should codify and amend the regulations as necessary to allow for external filtering and other added equipment to be used to reduce or eliminate interference.

2. Modify the licensing and coordination procedures to include review of Adjacent Channel spacing for all “non-EA” frequencies.

a. Adjacent channel spacing standards should be established for use in frequency coordination, and frequency coordinators should review the spacing of channels adjacent to the frequency under consideration, as well as the co-channel spacing, during the coordination process.

b. Licensees should be required to notify authorized 800/900 MHz frequency coordinators thirty days in advance of initiating transmissions from a new “low site” (see 3 (b) below) when any of the frequencies to be used at the site is a Business, Industrial/Land Transportation, or Public Safety channel.

3. Modify specific technical rules to ensure proper engineering of systems regardless of their placement within the band.

a. Adopt the “APCO Best Practices” recommendation to require that user receiver equipment provide a minimum 75 dB intermodulation specification.^{29 30 31}

b. Require licensees of “low site” systems to reduce transmitter ERP to 10 watts per channel. This measure alone would provide an 89% improvement in intermodulation, while the low-site system would continue to operate effectively across its coverage area.³² UTC/EEL recommends that “low sites” be defined similarly to the “cellular” definition offered by the PWC Parties: sites 1) that are included within a system with five or more overlapping sites with handoff capability; 2) with twenty or more operating frequencies; and 3) with

²⁸ See Page 126, National Coordinating Committee – Implementation Subcommittee, Appendix O, <http://npstc.du.edu/documents/IM00039-P024-Appendix-O.pdf>

²⁹ See, page 14, APCO Best Practices Guide, December 2000.

³⁰ See, page 44, Motorola’s Interference Technical Appendix, Issue 1.41, February 2002

³¹ See, Attachment 5, Six Month Status Report of the Project 39 Technical Committee, March 19, 2002

³² See Comments of Pinnacle West in WT Docket No. 02-55 (filed Feb. 10, 2003)(providing calculation for 89% improvement in intermodulation).

antennas at a height of less than 100 feet, at a height above average terrain (HAAT) of less than 40 meters.

c. To reduce sideband emissions, apply the 700 MHz sideband rules to low sites meeting the above definition.

d. UTC/EEI agrees with Section 4.1.2 of Appendix F to the Supplemental Comments, concerning proposed out-of-band emission standards for base station transmitters.³³ However, since UTC/EEI contemplates the growth of advanced technology across the entire 800 MHz band, a uniform noise suppression standard should apply to the entire band.

UTC/EEI urges the adoption of these recommendations to provide elimination and prevention of interference, and to enable the regulatory flexibility that will improve the utility of the 800 MHz band for the future.

F. The Proposed Treatment of SouthernLINC's System Proves the Soundness of UTC/EEI's Recommendations

The digital system employed by SouthernLINC is a prime example of a direction in which the 800 MHz band could move, if not hampered by regulations designed to require outdated technology. Its proposed treatment in the PWC Proposal shows the greater benefit to be derived from adopting the regulatory framework UTC/EEI recommends.

The SouthernLINC system has a four-state footprint and serves approximately 250,000 end users using a combination of high and low sites. However, unlike Nextel's system using the same technology, SouthernLINC does not cause interference. The size, number of frequencies and commercial status of the SouthernLINC system has proved too much for it to be included under the complex mandatory retuning process in the Supplemental Comments. The answer? The PWC Proposal recommends that SouthernLINC be left where it is,

to grow as needed,³⁴ including migration to more low-site architecture, *as long as it does not cause interference*.³⁵ The only requirement would be the same sort of pre-implementation notification and coordination requirement UTC has recommended, along with the responsibility to resolve any harmful interference to other systems.³⁶

UTC/EEI emphasizes strongly that this is the appropriate answer, not just for SouthernLINC, but for all other licensees, as well. With notification, pre-coordination and mandatory resolution of any interference, *all* licensees can operate confidently together within this band. Their systems will not be frozen at an arbitrary level of growth and technology, and they will not be at the mercy of an all-powerful committee to which their needs are not a priority, that can force them into inadequate spectrum with a mostly unusable coverage area. UTC/EEI urges the Commission to consider the proposed SouthernLINC model as a far preferable solution for the thousands of systems that wish to stay and grow in this frequency band.

³³ See, §4.1.2, Out-of-band emissions (OOBE) for base station transmitters in the 861-895 MHz band, Supplemental Comments at F-8.

³⁴ SouthernLINC would be required to relocate out of the former General Category due to the proposed relocation of NPSPAC systems to that portion of the band.

³⁵ Supplemental Comments at 44-46. UTC/EEI notes also that the PWC Proposal calls for negotiations between incumbent licensees and Nextel prior to re-banding (*see, e.g., Id.* at 21). Such negotiations could just as easily take place voluntarily to comply with mandatory interference resolution requirements or to consolidate a spectrum position, leading to private market agreements to both parties' benefit.

³⁶ *Id.* at 46.

